A **KUCHING WATERFRONT DEVELOPMENT SDN BHD**

v.

SUPERINTENDENT OF LANDS AND SURVEYS, KUCHING DIVISION & ORS

B

HIGH COURT SABAH & SARAWAK, KUCHING
DAVID WONG DAK WAH J
[CIVIL SUIT NO: S21-06-2008-III]
7 NOVEMBER 2008

C ***CIVIL PROCEDURE:*** *Injunction - Interim injunction - Principles to be applied in deciding whether to allow interim injunction - Whether on totality of facts presented there exists bona fide serious issues to be tried - Whether damages would be an adequate remedy - Where justice of the case lies - Whether there are bona fide serious issues to be tried - Financial ability of defendant to* D *compensate or inability of plaintiff to give a viable undertaking not to be sole factor in determining whether to grant interim injunction - Whether just and equitable for court to maintain status quo*

CIVIL PROCEDURE*: Injunction - Interim injunction - Procedure - Not* E *court's function at this stage to resolve difficult questions of law and fact which require detailed and serious deliberation*

CIVIL PROCEDURE: *Injunction - Interim injunction to restrain disposal of land - Damages not an adequate remedy - Inability to assess damages - Interim injunction granted*

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The plaintiff, registered owner of a piece of land, had subleased it to Jade Hotel Sdn Bhd from 28 November 1989 to 10 August 2001. One of the conditions attached to the land was that 'the erection of a building or buildings shall be in accordance with detailed drawings and G specifications approved by the Kuching Municipal Council and shall be completed within five years from the date of registration of this Lease'. In 1991 the building plan for Jade Hotel was approved. On 27 May 1995 the land was declared a Special Development Area pursuant to s. 33A of the Land Code. The plaintiff received several notices under s. 33A(1) of the Land Code from the Lands and Surveys informing it H that it had not complied with s. 33A(1) of the Land Code and was given notice to take the appropriate remedial action. The 2nd defendant then pursuant to s. 33A of the Land Code re-entered the land and caused a memorial of such re-entry to be made on the register. The 2nd defendant also issued a document entitled "Certificate of Re-Entry" dated I 13 February 2006 (Certificate of Re-Entry) in respect of the alleged re-entry of the land. The basis of the re-entry was allegedly that the

plaintiff had failed to comply with s. 33A notices issued by the 1st defendant. In short the plaintiff had failed to recommence or resume work for the construction of Jade Hotel. The plaintiff filed an *inter parte* application, *inter alia*, for an order that the 3rd and 4th defendants *ie*, the Majlis Mesyuarat Kerajaan Negeri and Government of the State of Sarawak be restrained from executing any instrument to alienate the land pending disposal of the plaintiff's suit against the defendants.

Held (granting order in terms of the plaintiff's application):

(1) The principles guiding courts whether to allow an interim injunction before a trial are (i) whether on the totality of the facts presented there exists *bona fide* serious issues to be tried; (ii) whether damages would be an adequate remedy and that is whether the plaintiff would be adequately compensated in damages for the defendants' activities if the plaintiff were to succeed; and (iii) where does the justice of the case lie. (para 16)

(2) In an interim injunction it is not part of the court's function at this stage of litigation to resolve difficult questions of law and fact which require detailed and serious deliberation. (para 22)

(3) The financial ability of the defendant to compensate or the inability of the plaintiff to give a viable undertaking should not be the sole factor in determining whether an interim injunction should be granted. The 4th defendant had the financial ability to compensate the plaintiff for any damages which may be suffered but how can one assess the damages here? For this reason and the fact that the subject matter of this Suit was a landed property, damages would not be an adequate remedy. Furthermore, the financial ability or inability of the plaintiff to pay damages, if required to do so, paled in significance because of the inability to assess the damages in this case. (paras 25 & 26)

(4) The crucial issue was whether after considering all the pertinent facts it was just and equitable for the court to maintain the status quo and to restrain the defendants from dealing with the land until the disposal of the Suit. On the facts of the case, the plaintiff should be entitled to the interim injunction prayed. (paras 27 & 28)

Case(s) referred to:

Chong Sui Jin & Ors v. Jeramas Sdn Bhd & Anor & Another Appeal [2008] 6 CLJ 597 CA ***(refd)***

Pemungut Hasil Tanah Daerah Barat Daya Penang v. Kam Gin Paik & Ors [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC ***(refd)***

Kho Ah Soon v. Ooi Kar Seng (Properties) Sdn Bhd [1995] 3 CLJ 812 CA ***(refd)***

Legislation referred to:
Federal Constitution, arts. 13(1), (2)
Government Proceedings Act 1956, s. 29(1), (2)
Land Code (Cap 81) (Sarawak), ss. 33A(1), (2)(a), (4), (6), 198, 200(e), 201

For the plaintiff - Tan Thiam Teck (Paul Tang with him); The Law Firm Advocates & Solicitors
For the defendants - Datuk JC Fong (Saferi Ali with him) State AG's Chambers

Reported by Amutha Suppayah

JUDGMENT

David Wong Dak Wah J:

Proceedings

[1] Before me is an *inter parte* application by the plaintiff for the following reliefs:

(a) The 3rd and 4th defendants, their servants and/or agents be restrained, until the disposal of this action, from executing or signing any instrument/document and/or giving any direction, instruction and/or order to undertake and/or carry out any act/activity to facilitate and/or which would lead to or result in the grant of, alienation of and/or dealing with that parcel of land situated at Jalan Tunku Abdul Rahman, Kuching containing an area of 1,516 square metres, more or less, and described as Lot 276 Section 48 Kuching Town Land District ("the land") to or in favour of anyone other than the plaintiff; and

(b) The 1st and 2nd defendants, their servants and/or agents be restrained, until the disposal of this action, from registering any instrument or document or evidencing the grant of, alienation of and/or dealing with the land to anyone other than the plaintiff.

[2] The reliefs sought are based on the following claims:

(a) A declaration that the purported re-entry of the land by the 2nd defendant is unlawful, invalid, null and void, an invasion of the right of property of the plaintiff as the registered proprietor of the land, and/or a wrongful act;

(b) An order that the purported re-entry of the land by the 2nd defendant be set aside;

(c) An order that the memorial of the 2nd defendant's unlawful and invalid re-entry of the land made on the register as prescribed under the Land Code (hereinafter referred to as "the register") is null and void, and/or a wrongful act be expunged from the register;

(d) An order that the document entitled "certificate of re-entry" dated 13 February 2006 in respect of the unlawful and invalid re-entry of the land by the 2nd defendant is null and void and/or a wrongful act, be expunged from the Sarawak Government Gazette and be set aside;

(e) An order declaring that the plaintiff is still the legal and beneficial owner and/or the registered proprietor of the land;

(f) An order declaring that the plaintiff is entitled as against the 4th defendant to the land and/or to the possession thereof;

(g) alternatively,

(i) A declaration that ss. 200(e) and 201 of the Land Code are inconsistent with arts. 13(1) and 13(2) of the Federal Constitution and are null and void;

(ii) An order that the 4th defendant pay to the plaintiff as compensation, the value of the land as at the date of judgment with interest thereon at the rate of 8% per annum from the date of judgment until date of full and final settlement;

(h) In the further alternative, that this Honourable Court should apply the provisions of ss. 200(e) and 201 of the Land Code with such modifications as may be necessary to bring these to accord with the provisions of the Federal Constitution, in particular art. 13 thereof.

(i) Damages against the 2nd and 4th defendants jointly and severally in respect of the 2nd defendant's invasion of the right of property of the plaintiff as the registered proprietor of the land;

(j) A declaration that:

(i) the 3rd defendant has no power or right to determine whether to grant any relief against forfeiture and/or to impose any condition in relation thereto; and

(ii) the so called condition imposed by the 3rd defendant that the plaintiff deposit a cash bond of RM12,788,941 with Dewan Bandaraya Kuching Utara (hereinafter referred to as "DBKU") is unlawful, invalid, null and void; and

A (iii) that the cash bond of RM12,788,941 imposed by the 3rd defendant is in any event, arbitrary, unreasonable and grossly excessive having regard to its stated intended purpose;

(k) General damages against the 1st, 2nd, 3rd and 4th defendants jointly and severally for:
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(i) the additional cost and expense to be incurred by the plaintiff to undertake and complete the development on the land; and

(ii) loss of profits due to the:

C (a) delay in the construction and completion of the development of the land because of the unlawful, invalid, null and void re-entry of the land by the 2nd defendant and/or the unlawful, invalid, null and void condition imposed by the 3rd defendant that the plaintiff deposit a cash bond of
D RM12,788,941 with DBKU, which sum is arbitrary, unreasonable and grossly excessive in any event; and

(b) additional cost and expense to be incurred by the plaintiff to undertake and complete the development on the land.

E **Background Facts**

[3] The plaintiff (formerly known as Tolaz Sdn Bhd) became the registered owner of the land on 26 May 1988 and had subleased it to Jade Hotel Sdn Bhd for the period from 28 November 1989 to
F 10 August 2071. One of the conditions attached to the land is that 'the erection of a building or buildings shall be in accordance with detailed drawings and specifications approved by the Kuching Municipal Council and shall be completed within five years from the date of registration of this lease'.

G **[4]** Prior to 1991 the plaintiff made its 1st application to build a 20 storey hotel and 3 storey basement to be known as Jade Hotel and it was approved subject to the conditions contained in the Lands and Surveys Department's (Lands and Surveys) letter dated 2 April 1990. In 1991 the building plan for Jade Hotel was approved by the Lands
H and Surveys, the Fire Department and Dewan Bandaraya Kuching Utara (DBKU) subject to conditions contained in the letter dated 7 January 1991. In December 1991, the plaintiff informed DBKU that the construction of Jade Hotel will be done in two phases.

I **[5]** On 27 May 1995 the land was declared a Special Development Area pursuant to s. 33A of the Land Code.

[6] On 29 November 1995 the plaintiff received a notice under s. 33A(1) of the Land Code from the Lands and Surveys (1st notice) informing it that it had not complied with s. 33A(1) of the Land Code and was given 60 days from 22 September 1995 to take the appropriate remedial action. The plaintiff replied to the 1st notice by informing the Lands and Surveys that the contractor had problem in its financial arrangement.

[7] In December 1996, the plaintiff submitted another application (2nd application) to build a 21 storey service apartments cum commercial complex and 3 storey basement to replace the plans in the 1st application. After various correspondences between the plaintiff and relevant authorities, the Lands and Surveys rejected the 2nd application. On 29 March 2005 the Lands and Surveys issued a 2nd notice under s. 33A of the Land Code requiring the plaintiff to take the same remedial action as in the 1st notice. In reply to the 2nd notice the plaintiff informed that the approval of the 1st application by DBKU had lapsed and it was not possible to recommence construction works until the 2nd application has been approved.

[8] In April 2005 the plaintiff submitted a 3rd application to the Lands and Surveys which consisted of a Sky-bridge linking level two of the proposed Commercial Podium to the 2nd Floor of the Riverside Shopping Complex. This 3rd application was rejected by the State Planning Authority *vide* its letter dated 27 September 2005 by the 1st defendant. On 10 October 2005 the Lands and Surveys issued a third notice to the plaintiff pursuant to s. 33A informing that:

(1) the plaintiff's agent had been notified that the plaintiff's "revised submission" dated 31 October 2001 has not been approved by the State Planning Authority.

(2) that neither the plaintiff nor the Sublessee had complied with the 2nd notice, and gave "final notice" that if the plaintiff failed to resume work for the construction of the "hotel/commercial complex approved under the Buildings Ordinance 1994 of Sarawak" on 2 January 1991 within 30 days from the date of the 3rd notice, pursuant to s. 33A(2)(a) read with s. 33A(4) of the Land Code, the 1st defendant shall have to enter into possession of the Land on behalf of the 4th defendant without any further notice to the plaintiff.

[9] To comply with the 3rd notice, the plaintiff on 25 October 2005 resumed preliminary and general work for the construction of Jade Hotel on the Land which was then flooded. According to the plaintiff, it had informed the Lands and Surveys and DBKU the progress of the

A resumption of works. Further inspection was carried out by the Lands and Surveys on 27 October 2005 and 8 November 2005 and they had allegedly acknowledged that they were satisfied with the progress of works. On 14 November 2005 DBKU informed the plaintiff that the building plan had lapsed and no further works could be carried out until
B a new submission with re-approval by the Lands and Surveys and the Fire Department was made by the plaintiff. On 28 December 2005 pursuant to that advice the plaintiff submitted *inter alia,* 10 sets of the Building Plan to DBKU for its endorsement. On 4 January 2006 DBKU then forwarded a copy of the Building Plan to the Lands and Surveys
C and the Fire Department for their consideration and approval. In early February 2006 the plaintiff followed up with DBKU, the Lands and Surveys and the Fire Department as to the status of the re submitted building plan.

[10] Allegedly unknown to the plaintiff, the 2nd defendant pursuant to
D s. 33A of the Land Code had on 13 February 2006:

(a) re-entered the land; and

(b) caused a memorial of such re-entry to be made on the register as prescribed under the Land Code in respect of the land; and
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(c) issued a document entitled "certificate of re-entry" dated 13 February 2006 (certificate of re-entry) in respect of the alleged re-entry of the land as aforesaid

F **[11]** The basis of the re-entry was allegedly that the plaintiff had failed to comply with s. 33A notices issued by the 1st defendant. In short the plaintiff had failed to recommence or resume work for the construction of Jade Hotel.

[12] On 9 March 2006 the plaintiff's officers had a meeting with the
G then State Attorney-General, Datuk JC Fong (SAG) wherein the SAG was alleged to have said that the 4th defendant has no intention to take the land back and had just wanted to give the plaintiff a 'shock'. The SAG further advised the plaintiff to submit a petition for relief against forfeiture pursuant to s. 33A(6) of the Land Code and to submit a new
H proposal to the relevant authorities with an assurance that the plaintiff will be given reasonable time to prepare, commence and complete the work once the new proposal is accepted and a form of performance bond may be required from the plaintiff.

[13] Pursuant to the meeting with the SAG, the plaintiff instead of
I seeking judicial review of the certificate of re-entry on 12 April 2006 submitted a joint petition to the 3rd defendant for relief against the re-entry and forfeiture of the land (the petition) but without prejudice to

their rights to seek judicial review of the issuance of the certificate of re-entry in court. Upon receipt of the petition, the state planning authority instructed DBKU to and on 8 August 2006 did request the plaintiff to submit the estimated construction cost plus installation of closed circuit television system for the purpose of restarting work on the car park levels of Jade Hotel and the calculation of the surety required prior to the approval and commencement of work. The plaintiff submitted a quotation of RM2,453,000 to DBKU on 10 August 2006.

[14] The petition was approved by the 3rd defendant through a letter dated 11 June 2007 by the State Secretary subject to the condition *inter alia*, that RM12,758,941 in cash be deposited by the plaintiff and the Sublessee as security to ensure that the construction work of the development on the land is completed diligently and satisfactorily. The plaintiff then wrote to the State Secretary on 9 July 2007 to inform that the sum of RM12,758,941 was manifestly excessive and requested the cash bond of RM12,758,941 be replaced with a bank guarantee of RM1,750,000. The request was rejected. Another meeting with the SAG was held on 1 October 2007 to attempt to amend the cash bond requirement but to no avail as on 11 October 2007 the State Secretary informed the plaintiff that unless the cash bond condition is complied with the land will be forfeited. On 23 October 2007 the plaintiff requested that instead of a cash bond, a bank guarantee for the sum of RM12,758,941 be given to the 3rd defendant. Again on 25 October 2007 the request was rejected by the State Secretary. Subsequent to this letter, the plaintiff appealed to one Dato Sri Wong Soon Koh on 22 November 2007 and when there was no reply to the appeal, an appeal was made to the Chief Minister of Sarawak on 7 April 2008. Again there was no reply by the Chief Minister.

[15] On 25 July 2008 pursuant to s. 198 Land Code, the plaintiff wrote to the SAG and the Lands and Surveys Department for the purpose of informing them of this impending action. On 25 August 2008 the plaintiff's solicitors wrote to the SAG seeking some undertaking from the 4th defendant. When there was no response from the SAG and under the threat that the land may be tendered off, on 27 October 2008 the plaintiff commenced this suit for reliefs as set out in the statement of claim and on the same day took out this application which I shall now deal with.

Approach Of The Court

[16] The principles guiding courts whether to allow an interim injunction before a trial are clear. Briefly stated, I am required to ask myself three questions:

A 1. Whether on the totality of the facts presented there exists *bona fide* serious issues to be tried. If I find that there are no serious issues to be tried then I shall reject the application for interim injunction. However if I find that there are serious issues to be tried then I go to the next question.

B 2. Whether damages would be an adequate remedy and that is whether the plaintiff would be adequately compensated in damages for the defendants' activities if the plaintiff were to succeed. And if the defendants are in a financial position to pay damages, then the interim injunction sought for should be refused. If the plaintiff's C undertaking as to damages would provide adequate damages and is in a financial position to do so then the interim injunction sought for should be granted. However when there is doubt as to the adequacy of damages then I am required to ask the third question.

D 3. Where does the justice of the case lie? In answering this question I am mindful of the fact that the remedy that the court is asked to administer is discretionary and intended to produce a just and equitable result for the period between the date of this application and the trial proper and to maintain the *status quo*.

E **[17]** With that I shall now deliberate on those questions.

Are There Bona Fide Serious Issues To Be Tried?

[18] Having heard from counsels and read the contents of the affidavits filed by the parties, I have no doubt that there are *bona fide* serious F issues to be tried and they are:

1. Whether the certificate of re-entry in respect of the land was lawfully issued by the 2nd defendant?

G 2. In relation to issue 1, what are the legal ramifications of the meetings held between the plaintiff's officers with the SAG?

3. Also in relation to issue 1, whether the 2nd defendant had complied with the statutory provisions prior to issuing the certificate of re-entry?

H 4. Whether the plaintiff should have attacked the certificate of re-entry by way of judicial review or by way of a writ action?

5. What is the legal ramification of the plaintiff's failure to comply with the terms and conditions endorsed on the title deed?

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6. Whether the plaintiff had by acting on the advice of its solicitors to petition against forfeiture accepted the forfeiture? A

7. Whether s. 200(e) and s. 201 of the Land Code infringe arts. 13(1) and 13(2) of the Federal Constitution?

[19] However the learned SAG in his submission submitted that the plaintiff's claims which amounted to a claim for restoration of ownership and possession of the land cannot be sustained in law and hence this application for interim injunction is frivolous and vexatious. The submission is premised on s. 29(1) & (2) of the Government Proceedings Act 1956 which reads as follows: B C

29. (1) ...

(b) in any proceedings against the Government for the recovery of land or other property the *court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.* (Emphasis added.) D

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government. E

[20] Reliance was also made on the case of *Pemungut Hasil Tanah Daerah Barat Daya Penang v. Kam Gin Paik & Ors* [1986] 1 MLJ 362 where the Privy Council @ p. 365 held as follows: F

> However, their Lordships agree with the Federal Court that section 29(1)(b) of the Government Proceedings Ordinance 1956 precludes an order being made against the Government, whose servant the appellant is, for the recovery of the land. So the Federal Court rightly set aside that part of the order of the learned trial judge which ordered the appellant to deliver possession of the lands back to the respondents. G

[21] If what the SAG submitted is correct then not only this application but also this Suit should be dismissed. H

[22] However we must not lose sight of the fact that what is before me is an application for an interim injunction and it is not part of the court's function at this stage of litigation to resolve difficult questions of law and fact which require detailed and serious deliberation. That principle of law was applied by the Court of Appeal in the recent case I

of *Chong Sui Jin & Ors v. Jeramas Sdn Bhd & Anor (and Another Appeal)* [2008] 6 CLJ 597. At the High Court, the learned judicial commissioner made a final determination on the issue of *locus standi* when considering an application for interim injunction. The ground of appeal against the High Court's decision was that the learned judicial commissioner had erred in making a final determination on the issue of *locus standi*. This ground was upheld by the Court of Appeal and this is what Hassan Lah JCA said:

> Looking at the arguments in the High Court and the submissions made to us we have no doubt that the issue of *locus standi* raised in this appeal related to the threshold *locus standi* and not the substantive *locus standi*. The function of the court at this stage is only to decide whether this issue discloses a *bona fide* serious issue to be tried and the court must refrain from making any determination on the issue at this stage as this is only an application for an injunction. This has been clearly stated by Jemuri Serjan CJ (Borneo) in *Alor Janggus Soon Seng Trading Sdn Bhd v. Sey Hoe Sdn Bhd* [1995] 1 AMR 549 at p. 584; [1995] 1 MLJ 241 at p 266:
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> > At an interlocutory proceeding for an injunction, the court is not called upon nor is it desirable for the court to decide finally on the rights of the parties but the court must be satisfied that there is a serious issue to be tried. The court is not justified in embarking upon anything resembling the trial of the action upon conflicting affidavits nor to evaluate the strength of either party's case. This is settled law now hallowed by the famous word of Lord Diplock in *American Cyanamid*'s case ([1975] AC 396 at p. 407; [1975] 1 All ER 504 at p 510; [1975] 2 WLR 316 at p. 323):
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> > > … It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations.
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> ... In the instant case the issue of *locus standi* was raised in the plaintiffs' application for interlocutory injunction and there was no application by the defendants to have the suit struck out on the ground that the plaintiffs have no *locus standi*. As such the function of the High Court in the instant case at that stage was to determine only whether there was a serious question on *locus standi*. The learned Judicial Commissioner did not do that but instead she made a final determination on the issue of *locus standi*. In our view the learned Judicial Commissioner had erred when she did not follow the guidelines stated by this court in *Keet Gerald Francis Noel John*'s case. It is our view that from the submissions made by the parties on the

issue of locus stand the High Court should have held that there was a serious issue raised on *locus standi* and the High Court should then move to the next step of its inquiry in accordance with the guidelines set out in *Keet Gerald Francis Noel John*'s case.

[23] Similarly in the application before me, there is no application by the defendants to have the Suit struck out on the ground that the plaintiff's claim is not sustainable in law. Accordingly I am left with no option but to treat the issue of whether the Suit can be sustained based on the grounds submitted by the learned SAG as one of the serious issues to be tried. With that, I now move on to consider the next question.

Whether Damages Would Be An Adequate Remedy?

[24] Learned counsel for the plaintiff, Mr. Tan Thiam Teck (Mr. Tan), submitted that land is a special commodity and once lost may not be adequately compensated for any loss and relied on the authority of *Kho Ah Soon v. Ooi Kar Seng (Properties) Sdn Bhd* [1995] 3 CLJ 812 where it concerned a removal of caveats on a piece of land and an application to set aside an *ex parte* injunction. In allowing the injunction to preserve the *status quo* Shaik Daud JCA said this:

The learned Judge also considered two other issues. First, the learned Judge doubted the financial ability of the Appellant to conclude the sale in view of the price involved. He also doubted the ability of the Appellant to pay damages should he fail in his claim against the Respondent. In this respect, I see no reason why the Appellant should be deprived of the benefit of a specific performance of the agreement which he says was concluded. All he is asking is for his claims to be tried, and until the Respondent should not be jeopardize the position by disposing of the said property in the meantime. The Appellant has averred that he is at all material times ready and willing to conclude the sale and this is good enough for me. Even plaintiffs who are poor should not be denied caveats and injunctions. Questions of financial ability should not affect the position of the essential justice of a case as between the parties. (see *Allen v. Jambo Holdings Ltd & Ors* [1980] 2 All ER 502). In that case, it was held that the issue of mareva injunction ought not to be determined solely by a plaintiff financial standing and in each case the issue of an injunction depended on the balance of justice and convenience.

Looking at the facts of the present case, it seems clear to me that as the learned judge himself has rightly held that there are serious issues to be tried and as there is unrefuted evidence of actual ongoing negotiations to dispose of the said property to other potential buyers, the balance of convenience and of justice must be in favour of maintain the *status quo*. Land being a valuable and special commodity, once lost, may not adequately be compensated by damages.

[25] The following principles can be derived from that. Firstly, the financial ability of the defendant to compensate or the inability of the plaintiff to give a viable undertaking should not be the sole factor in determining whether an interim injunction should be granted. Secondly the loss of a landed property may not be adequately compensated. I have no doubt these principles are sound in law and I adopt them in my deliberation.

[26] In this case I have no doubt that the 4th defendant have the financial ability to compensate the plaintiff for any damages which may be suffered but how can one assess the damages here? The plaintiff wants to develop the land and if allowed to do so may be deprived of the profits or alternately may incur losses from the development. The economic climate is such that no one including the well trained economists, can predict the future. The recent crashes in the world stock market and economy is a perfect example of this unpredictability. For this reason and the fact that the subject matter of this Suit is a landed property, I find that damages will not be an adequate remedy. Furthermore, the financial ability or inability of the plaintiff to pay damages, if required to do so, pales in significance because of the inability to assess the damages in this case. With that I shall now move to the last question.

Where Does The Justice Of The Case Lie?

[27] The crucial issue is whether after considering all the pertinent facts it is just and equitable for the court to maintain the *status quo* and in this case to restrain the defendants from dealing with the land until the disposal of this Suit.

[28] After having read the affidavits filed with care and considered the submissions of counsels, it is my view that plaintiff should be entitled to the interim injunction prayed for and my reasons are these:

a. The plaintiff had expended some RM10 million on the land.

b. The defendants had re-entered the land on 13 February, 2006 and as no action had been taken by them to dispose it leads me to conclude that there is no urgency in the matter.

c. As this matter concerns a piece of prime land in the middle of Kuching, it is unlikely the 4th defendant will suffer any damages as the value of the land in all probability will increase over time.

d. The delay, if any, in my view has been explained by the plaintiff. In any event I agree with Mr. Tan that the delay had not prejudiced the defendants as they themselves had not taken prompt action after their re-entry in 2006.

Order Of The Court

[29] Accordingly I grant an order in terms as prayed for in encl. 5. However I order a speedy trial of this case and in this respect I direct parties to be ready for trial on or before January 2009 and will give the necessary directions after hearing counsel.